TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 125

JOHN P. McLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF CALIFORNIA, PETITIONER

vs.

PACIFIC LUMBER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF ATTORNEYS.

PILLSBURY, MADISON & SUTRO, EUGENE D. BENNETT, Esq., 225 Bush Street, San Francisco, California, Attorneys for Plaintiff and Appellee.

GEO. J. HATFIELD, U. S. Attorney, ESTHER B. PHILLIPS, Asst. U. S. Attorney, P. O. Building, San Francisco, California, Attorneys for Defendant and Appellant.

In the Southern Division of the District Court of the United States for the Northern District of California at Law.

No. 18,725-S

THE PACIFIC LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN P. McLAUGHLIN, as Collector of the United States Internal Revenue for the First District of California,

Defendant.

COMPLAINT FOR RECOVERY OF TAXES AND INTEREST.

Plaintiff above named complains of defendant above named and for cause of action alleges:

I.

That this is a case arising under the laws providing for internal revenue, to-wit: that it is an action brought against a Collector of Internal Revenue, under and by virtue of Sections 3220 and 3226 of the Revised Statutes of the United States, being Sections 149 and 156, respectively, of Title 26, entitled "Internal Revenue" of the Code of the Laws of the United States of America, approved June 30, 1926, to recover taxes and interest erroneously or illegally assessed or collected.

II.

That at all times hereinafter mentioned plaintiff was and now is a corporation organized and existing under and by virtue of the laws of the State of Maine, having its principal office in the First United States Revenue District of California.

III.

That defendant was at all times herein mentioned [1]* and now is the duly appointed, qualified and acting Collector of United States Revenue for the First District of California, having his office in the City and County of San Francisco, in the State and Southern Division of the Northern District of California, and is a citizen and resident of the State and Southern Division of the Northern District of California.

*Page numbering appearing at the foot of page of original certified Transcript of Record.

IV.

That plaintiff herein makes claim against defendant herein for a refund from such defendant of the sum of $143,122.23 as and for income tax overpaid by said plaintiff to said defendant for the calendar year 1923, and that the facts in respect thereto are these:

That on or about the 20th day of March, 1924, plaintiff filed in the office of defendant, as aforesaid collector, a return of net income in the amount of $1,158,362.46 as and for plaintiff's taxable net income for said calendar year. That plaintiff paid to defendant, as aforesaid collector, the total amount of $144,795.31, as and for the total income tax for said calendar year on said amount reported as net income as aforesaid. That plaintiff paid said total amount of $144,795.31 of income tax in four installments in the respective amounts of $36,200., $36,-198.44, $36,198.44 and $36,198.43 on or about the 15th day of March, 1924, the 14th day of June, 1924, the 13th day of September, 1924, and the 13th day of December, 1924, respectively. That thereafter plaintiff received from the Supervising Internal Revenue Agent at San Francisco an examination report dated January 13, 1927, covering plaintiff's taxable net income for said calendar year. That said examination report set forth corrected net income in the amount of $1,144,977.80 as taxable to plaintiff for said calendar year, and set forth the amount of $143,122.23 as and for the total [2]

income tax upon said corrected net income. That on or about the 30th day of April, 1928, plaintiff received from defendant a refund in the amount of $1,673.08, with interest thereon, on account of the difference between said total income tax upon said corrected net income and said total amount of $144,795.31, paid by plaintiff as aforesaid. That thereafter, to-wit, on or about the 14th day of March, 1928, plaintiff filed with defendant, as aforesaid collector, and thereafter defendant transmitted to the Commissioner of Internal Revenue, an appeal in the form of a claim for refund of said total amount of $143,122.23 of income tax as aforesaid paid and unrefunded, together with interest thereon in the amount of $37,645.90, or a total of $180,768.13 of taxes and interest. That said appeal to the Commissioner of Internal Revenue was made according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and was in the words and figures as follows, to-wit:

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Form 843—Jan. 1922
Comptroller General U. S.
January 18, 1922

(EXECUTE SEPARATE FORM FOR EACH TAX PERIOD)

CLAIM FOR

- [ ] ABATEMENT OF TAX ASSESSED
- [ ] CREDIT AGAINST OUTSTANDING ASSESSMENTS
- [ ] REFUND OF TAXES ILLEGALLY COLLECTED
- [ ] REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

IMPORTANT

File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

COLLECTOR'S NOTATION	
District	
Account number	
Date received	RECEIVED MAR. 14,1928 1st DIST. CALIFORNIA
Stamp here	
	J.M. REICHLIN, Collector of Internal Revenue
	Deputy Collector

State of California } ss:
County of San Francisco

NOTICE TO COLLECTOR

Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit

Stamp here

TYPE OR PRINT

The Pacific Lumber Company
(Name of taxpayer or purchaser of stamps.)

311 California Street
(Residence - give street and number as well as city or town and State.)

San Francisco, California
(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

PERIOD		YEAR
From:	Jan. 1st	1923
To:	Dec. 31st	1923

1. Business in which engaged Lumber Production & Manufacture
2. Character of assessment or tax Corporation Income Tax
(State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased $
4. Reduction of Tax Liability requested (Income and Profits Tax) $
5. Amount to be abated $
6. Amount to be refunded (or such greater amount as is legally refundable) $180,768.13
7. Dates of payment (see Collector's receipts or indorsements of canceled checks)
(If statement covers income tax liability, items 8-11, inclusive, must be answered.)
8. District in which return (if any) was filed
9. District in which unpaid assessment appears
10. Amount of overpayment claimed as credit $
11. Unpaid assessment against which credit is asked; period from to $

Deponent verily believes that this application should be allowed for the following reasons:

A. F. Thane & Company, a corporation, was incorporated on or about June 24, 1911. Its authorized capital stock was $100,000. divided into 1000 shares of the par value of $100. each. At the time of the incorporation 220 shares of its stock were subscribed for and issued. The taxpayer subscribed for and took 110 shares of such stock, and paid for the same the full par value thereof, viz., $11,000. During the year 1912, 280 additional shares of the stock of A. F. Thane & Company were issued, and the taxpayer subscribed for and took one-half thereof, viz., 140 shares; paying for the same the full par value thereof, viz., $14,000. During the year 1913, 30 additional shares of the stock of A. F. Thane & Company were issued, and the taxpayer subscribed for and took 15 shares thereof, paying for the same the full par value thereof, viz., $1,500. During the year 1914 an additional 10 shares of the stock of A. F. Thane & Company were issued, and the taxpayer subscribed for and took the same, paying therefor in cash the full par value thereof, viz., $1,000. In the same year (1914), the taxpayer purchased the remainder of the outstanding stock of A. F. Thane & Company, then held by Charles Nelson Company; and paid for the same the sum of $4,000; making its total actual investment in such stock at the end of 1914, $31,500.; its total holdings at that time being 540 shares, which constituted all of the shares of stock then issued and outstanding.

During the year 1919 the capital stock of A. F. Thane & Company was increased to $500,000., con-

sisting of 5,000 shares of the par value of $100. each. In that year and during the years 1920 and 1921 the taxpayer subscribed for and took in all 4,460 shares of such stock and paid therefor the full par value of the same, viz., $446,000. [4] Therefore the total investment of the taxpayer in the stock of A. F. Thane & Company, from the beginning, was $479,625., representing the actual cost of such stock to the taxpayer. In 1921 and at all times thereafter, until the dissolution of A. F. Thane & Company in 1923, the taxpayer owned and held all of the stock of said A. F. Thane & Company, consisting of 5,000 shares of the par value of $100. each.

In 1918 the capital of A. F. Thane & Company was intact and it had accumulated a substantial surplus. Its business had greatly expanded and it was believed that it was making substantial earnings during 1919 and 1920. But by reason of the great depression which occurred in the latter part of the year 1920, A. F. Thane & Company sustained enormous losses. By the end of the year 1921 the taxpayer recognized that the losses sustained by A. F. Thane & Company were such that its assets would not be more than sufficient, in any event, to liquidate its indebtedness; and the taxpayer's officers believed that the taxpayer's investment in the stock of A. F. Thane & Co. would result in complete loss. Therefore, the taxpayer charged off, as a loss in 1921, the entire amount of its investment in such stock. The Revenue Agent subsequently

held that whatever loss the taxpayer may have sustained from its investment in A. F. Thane & Co., stock was not properly attributable to the year 1921, inasmuch as A. F. Thane & Co., was still a going concern having substantial assets; and that no loss on account of such investment was properly deductible in 1921, nor until 1923, in which year the affairs of A. F. Thane & Co., were liquidated.

The taxpayer now concedes that this ruling was correct, but asserts that it is entitled to a deduction in [5] the year 1923 of the amount of its losses from the investment in such stock.

During the few years immediately preceding the year 1923 the taxpayer made advances to A. F. Thane & Co. amounting in the aggregate, over and above all repayments and recoveries, to $953,135.49. These advances were made in good faith, for the purpose of protecting the taxpayer's investment, and with an expectation of profit. In the year 1923 the business and affairs of A. F. Thane & Co., were liquidated and closed up, and the corporation dissolved. No assets whatever belonged to A. F. Thane & Co. after such liquidation, which liquidation was wholly completed before the end of the year 1923.

At no time prior to the year 1923 was it reasonably certain that the taxpayer would not recover a substantial part of its said advances, although it was recognized prior to that year that complete recovery was not reasonably probable.

In closing its books at the end of the year 1923 the taxpayer, having previously ascertained and

determined that the debt to it by A. F. Thane & Co. for the amount stated above was worthless, charged off on its books the entire amount of such indebtedness as a bad debt. The taxpayer respectfully asserts that it is entitled to a deduction from gross income for the year 1923 of the entire amount of its said investment in the stock of A. F. Thane & Co. viz., $479,625. as a loss sustained in that year.

The taxpayer further asserts that it is entitled to a deduction from gross income in the year 1923, as a bad debt, ascertained to be worthless and charged off within the year, of the amount of its said advances to [6] A. F. Thane & Co. in the sum of $953,135.49.

.....

(Attach additional sheets if necessary)

Sworn to and subscribed before me this.....day of ....., 19.....

.....

.....

(Title)

Signed: THE PACIFIC LUMBER COMPANY.

.....

....." [7]

That the statements made in said appeal and claim for refund are in all respects full, true and correct. That said appeal and claim was thereafter considered by the Commissioner of Internal Revenue and was by him wrongfully and erroneously

rejected and disallowed on or about the 4th day of June, 1928, by a communication, a copy whereof is hereto annexed and marked Exhibit "A" and is hereby referred to and made a part hereof. That no part of said amount of $1,158,362.46 reported by plaintiff as and for plaintiff's taxable net income, nor of said amount of $1,144,977.80 so reported by said supervising Internal Revenue Agent as and for plaintiff's corrected taxable net income, nor of either of them, was taxable to plaintiff for the following reasons, to wit:

That said amounts and each of them were offset by advances made by plaintiff in the amount of $953,135.49 to A. F. Thane & Company and by the cost to plaintiff in the total amount of $479,625. of stock of said A. F. Thane & Company. That plaintiff is entitled to deduct from the gross income reported for said calendar year said respective amounts of $953,135.49 and $479,625. That plaintiff is entitled to deduct said amounts for the reasons set forth in the aforesaid appeal and claim for refund.

That no taxable net income in any amount whatever was received by or accrued to plaintiff during said calendar year. That no federal income tax whatever was ever due or owing by plaintiff for said calendar year. That the collection of said tax by defendant as aforesaid, was unauthorized, erroneous and illegal for each of the reasons mentioned and set forth in said claim for refund, and for the reasons herein set forth. That by reason thereof

said defendant became liable and is bound by law to refund and to pay to plaintiff the total amount of said tax overpaid and unrefunded, as aforesaid, in the amount of $143,122.23, with lawful interest thereon. [8] That no part of the aforesaid amount of $143,122.23 has been refunded or repaid to plaintiff by defendant and the whole amount thereof, with interest thereon from dates of payment, remains due and owing from this defendant to this plaintiff. Wherefore plaintiff brings this action in this court pursuant to the statutes of the United States to recover said internal revenue tax illegally assessed and/or collected.

WHEREFORE, plaintiff prays judgment against defendant in the sum of one hundred forty-three thousand one hundred twenty-two and 23/100 dollars ($143,122.23) with legal interest and costs of this suit.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.[9]

State of California,
City and County of San Francisco.—ss.

W. N. Nelson, being first duly sworn, deposes and says:

That he is an officer, to-wit, the Ass't. Secretary-Treasurer of the Pacific Lumber Company, a corporation, the above-named plaintiff; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are

therein stated on his information or belief and as to those matters that he believes it to be true.

W. N. NELSON.

Subscribed and sworn to before me this 19th day of May, 1930.

[Seal] CON. T. SHEA,
Notary Public in and for the City and County of San Francisco, State of California. [10]

EXHIBIT "A."

Treasury Department
Washington
Office of
Commissioner of Internal Revenue
Address Reply to
Commissioner of Internal Revenue
and refer to—IT:AR:G-4
HWG May 24, 1928

Pacific Lumber Company,
311 California Street
San Francisco, California

Sirs:

Your claim filed March 14, 1928 for the refund of $180,768.13, corporation income tax for the year 1923, has been examined.

The claim is based upon the statements that you owned the entire capital stock of A. F. Thane and Company, consisting of 5,000 shares of the par value of $100.00 each, acquired at a cost to you of $479,-625.00, and that you had loaned to A. F. Thane and

Company the amount of $953,135.49; that in 1923 A. F. Thane and Company became insolvent and was dissolved, leaving no assets; and that you are entitled to deduct from your 1923 net income, as losses, the foregoing amounts of $479,625.00 and $953,135.49, resulting in an overassessment of $180,768.13.

The deductions in question were disallowed by this office in the audit of the return.

The contentions in the claim appear to come within the scope of published rulings of the General Counsel, Bureau of Internal Revenue, and of the United States Board of Tax Appeals, as follows:

1. The liquidation of a subsidiary does not produce a loss which is deductible by the parent company. See G. C. M. 1501 (Internal Revenue Cumulative Bulletin VI-1, page 262) and United States Trust Company (1 B. T. A. 904), which sustain the Commissioner on this issue.

2. If one member of an affiliation makes advances to another member to meet operating losses occurring during the period of affiliation, the intercompany obligation thus arising may not be deducted by the corporation making the advance after the obligation has been determined to be worthless. See Gould Coupler Company (5 B. T. A. 518), which sustains the Commissioner.

In brief dated March 18, 1927 you contend that you are equitably entitled to a loss on your capital investment due to liquidation of the subsidiary for

the reason that you would undoubtedly be entitled to a loss if the stock were sold to a third party at less than its cost to you. In this connection the United States Board of Tax Appeals has ruled that affiliated corporations are, for the purpose of income taxes, one and the same taxpayer; the sale by a parent company of its capital stock holdings in a subsidiary company must be treated, for the purpose of the tax, as nothing more than a sale by the affiliated group of its own capital stock; and that such a sale is a capital transaction which cannot give rise to a taxable gain or a [11] deductible loss. See Appeal of Farmers Deposit National Bank, 5 Board of Tax Appeals, 528, decided November 16, 1926, and Article 543 of Regulations 62.

Since A. F. Thane and Company was affiliated with your company and due allowance was made in computing consolidated net income, for all deductible losses sustained by the subsidiary during the several years, a further deduction, reflecting directly or indirectly the same losses, is, in accordance with the foregoing decisions, not allowable.

The claim will, therefore, be rejected.

The rejection will officially appear on the next schedule to be approved by the Commissioner.

Respectfully,

C. B. ALLEN,
Deputy Commissioner.
By H. B. Robinson,
Head of Division.

[Endorsed]: Filed May 21, 1930. [12]

[Title of Court and Cause.]

SUMMONS.

The President of the United States of America.

To John P. McLaughlin, as Collector of the United States Internal Revenue for the First District of California, defendant.

YOU ARE HEREBY DIRECTED TO APPEAR AND ANSWER the Complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the Northern District of California, Southern Division, within ten days after the service on you of this Summons, if served within this county, or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required the said plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract or it will apply to the Court for any other relief demanded in the Complaint.

WITNESS the Honorable A. F. St. Sure, Judge of said District Court, this 21st day of May in the year of our Lord one thousand nine hundred and thirty and of our independence the one hundred and 54th.

[Seal] WALTER B. MALING,
Clerk,
By R. M. GREEN,
Deputy Clerk. [13]

United States Marshal's Office,
Northern District of California.

I hereby certify that I received the within writ on the 22nd day of May, 1930, and personally served the same on the 22nd day of May, 1930, upon Jno. P. McLaughlin by delivering to, and leaving with V. Coutts, Secy. to Jno. P. McLaughlin, said defendant named therein personally, at the city and County of S. F. in said District a certified copy thereof, together with a copy of the Complaint, attached thereto.

FRED L. ESOLA,
U. S. Marshal,
By HAROLD FRIEDENBERG,
Office Deputy.

San Francisco, May 23, 1930.

[Endorsed]: Filed May 23, 1930. Walter B. Maling, Clerk, by R. M. Green, Deputy Clerk.

[Title of Court and Cause.]

ANSWER.

The defendant above named answering the complaint heretofore filed in this case, alleges as follows:

I.

Denies that the taxes and interest referred to in paragraph I of the complaint were erroneously or illegally assessed and collected. Admits the remaining allegations of said paragraph.

II.

Admits the allegations of paragraph II of the complaint.

III.

Denies that the defendant was the duly appointed, qualified and acting Collector of the United States Revenue for the First District of California at any time prior to November, 1921. Saving for this denial, defendant admits the allegations of paragraph III of the complaint. [14]

IV.

Admits that this suit is a claim for a refund from the defendant of the sum of $143,122.23 as and for income tax paid to the defendant for the calendar year 1923. Denies that said income tax was overpaid and denies that the facts with respect thereto are as stated in the complaint.

Admits that plaintiff filed a return of net income in the amount of $1,158,362.46, as and for plaintiff's taxable net income for the calendar year 1923. Denies that said return was filed on or about March 20, 1924. Defendant alleges that said return was filed on or about April 14, 1924, and that said return was a consolidated return filed on behalf of the plaintiff and its affiliated corporations, and that said taxable net income was made up as follows:

Pacific Lumber Company (Maine)	$1,379,494.78
Pacific Lumber Company of Illinois	8,809.83
	$1,388,304.61
Less: Loss of A. F. Thane & Company	229,942.15
Consolidated net taxable income	$1,158,362.46

Admits that plaintiff paid to the defendant in his capacity as Collector of Internal Revenue, the sum of $144,795.31 as and for the total income tax for the calendar year 1924 on said amount reported in said consolidated return as net income. Admits that plaintiff paid said amount in four installments in the amounts and on or about the dates set forth in Paragraph IV of the complaint. Defendant admits that plaintiff received from the Supervising Internal Revenue agent at San Francisco [15] an examination report covering plaintiff's taxable net income for said calendar year. Denies that said report was dated January 13, 1927, and alleges that the same was dated December 4, 1926. Defendant further alleges that said report covered an examination of the income tax liability for the calendar year 1923 of certain companies affiliated with the plaintiff corporation. Defendant admits that said examination report set forth a corrected net income in the amount of $1,144,977.80 for said calendar year 1924, and that said report showed the amount of $143,122.23 as the total income tax upon such corrected net income. Defendant denies that said

report set forth such corrected net income as taxable to the plaintiff and alleges that in arriving at said corrected net income, said Revenue Agent included therein without change, the net income and net loss reported in the consolidated return by the Pacific Lumber Company of Illinois and A. F. Thane & Co., respectively, as hereinabove set out, and that the reduction therein made affected the income of the plaintiff corporation only. Defendant admits that on or about April 30, 1928, the plaintiff received from defendant a refund in the amount of $1,673.08 with interest thereon on account of the difference between said total income tax upon said corrected net income and the total amount of $144,795.31 previously paid by plaintiff.

Defendant admits that thereafter and on or about March 14, 1928, plaintiff filed with the defendant and thereafter defendant transmitted to the Commissioner of Internal Revenue, a claim for a refund of income tax paid for the calendar year 1923. Defendant admits that the total amount of said claim for refund was $180,768.13 and that said claim for refund covered all income tax as paid afore- [16] said, and unrefunded. Defendant denies that said claim purported to be for the respective amounts of income tax, $143,122.23 and interest thereon in the sum of $37,645.90. Defendant denies that said claim for refund constituted an appeal by the plaintiff. Defendant admits that the words and figures appended to page 3 of the complaint as

quoted on pages 4, 5, 6 and 7 of the complaint, represent a true and correct copy unexecuted of the aforesaid claim for refund. The defendant denies that this claim for refund was an appeal to the Commissioner of Internal Revenue made according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof.

Defendant admits that the Commissioner of Internal Revenue considered said claim for refund and that he rejected and disallowed the same on or about June 4, 1928, and that in this connection a communication was addressed to the plaintiff, a correct copy of which is annexed to the complaint and marked "Exhibit A". Defendant denies that the statements made in said claim for refund were in all respects full, true and correct and denies that the Commissioner of Internal Revenue erroneously refused and/or rejected and disallowed the same. Defendant admits that no part of said sum of $143,-122.23 with interest thereon has been refunded or repaid to the plaintiff by the defendant. Defendant denies the allegation in the complaint that no taxable net income in any amount was received by or accrued to plaintiff during said calendar year and that no income tax whatever was due or owing by plaintiff for said calendar year. Plaintiff denies the allegation in the complaint that the amount reported by said Supervising [17] Internal Revenue agent amounting to $1,144,977.80 was not taxable to the

plaintiff. Defendant denies that plaintiff is entitled to deduct from the gross income reported for said calendar year the amounts of $953,135.49 and $479,-625.00, which said amounts are alleged to have been advanced by plaintiff to A. F. Thane & Company and as the cost to plaintiff of stock in said A. F. Thane & Company, respectively.

Saving the express admissions made herein, defendant denies each and every allegation in Paragraph IV of the complaint.

WHEREFORE defendant prays that judgment be entered for the defendant and for its costs and for such other relief as may be just.

GEO. J. HATFIELD,
United States Attorney.
ESTHER B. PHILLIPS,
Asst. U. S. Attorney. [18]

United States of America,
Northern District of California,
City and County of San Francisco.—ss.

John P. McLaughlin being first duly sworn, deposes and says:

That he is the above named defendant; that he has read the foregoing answer and knows the contents thereof. The same is true of his own knowledge except as to those matters stated on information and belief and as to those matters he believes it to be true.

JOHN P. McLAUGHLIN,

Subscribed and sworn to before me this 5th day of August, 1930.

[Seal] RAYMOND HASKINS,
Notary Public in and for the City and County of San Francisco.

Service of the within answer by copy admitted this 5 day of Aug. 1930.

PILLSBURY, MADISON & SUTRO,
Attorney for Plf.

[Endorsed]: Filed Aug. 5, 1930. [19]

[Title of Court and Cause.]

AGREED STATEMENT OF FACTS.

IT IS HEREBY STIPULATED AND AGREED that the above entitled case may be tried by the court sitting without a jury. It is further stipulated and agreed by and between the parties hereto that the following facts are true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated, or as admitted in the pleadings.

I.

At all times herein mentioned plaintiff was and is a corporation organized and existing under and by virtue of the laws of the State of Maine, and having its principal office in the First United States Revenue District of California. That defendant now

is and at all times since November 21, 1921, has been the duly appointed, qualified and acting Collector of United States Revenue for the First District of California, having his office in the City and County of San Francisco in the Southern Division of the Northern District of California, and is a citizen and resident of the State of California and of the Southern Division of the [20] Northern District of California.

II.

During the year 1918, A. F. Thane & Company, a corporation organized and existing under and by virtue of the laws of the State of California, had an authorized capital stock of 1,000 shares of the par value of $100 each, of which 600 shares were issued and outstanding. The plaintiff Pacific Lumber Company owned 540 shares, which it had purchased from said A. F. Thane & Company at a cost of $31,500.00. A. F. Thane owned the remaining 60 shares. In 1920, the capital stock of A. F. Thane & Company was increased to 5,000 shares of the par value of $100 each. Pacific Lumber Company subscribed for 3960 additional shares, for which it paid $100 each, making its total holdings 4500 shares. A. F. Thane subscribed for additional stock, making his total holdings 500 shares. In 1921 Pacific Lumber Company purchased A. F. Thane's holdings and paid $52,125.00. The total sum paid by Pacific Lumber Company for the 5,000 shares of stock which it owned at the end of 1921 was $479,-625.00.

III.

During the period between March 17, 1921, and the close of December, 1923, Pacific Lumber Company and A. F. Thane & Company had financial arrangements with each other by which Pacific Lumber Company from time to time advanced cash to A. F. Thane & Company, paid accounts for, and assumed indebtednesses of A. F. Thane & Company which it had guaranteed, the total sum of such cash advances, accounts paid and indebtednesses assumed amounting to $1,234,157.09. A. F. Thane & Company from time to time during this interval made partial repayments of said advances, accounts, etc., the total of which repayments [21] at the close of December, 1923, amounted to $260,461.88. At the close of 1923 A. F. Thane & Company was duly dissolved by order and decree of the Superior Court of the City and County of San Francisco, State of California, and was liquidated by transfer of all of its remaining assets to Pacific Lumber Company and by closing its books and ceasing to do business. At the close of the year 1923 the assets thus transferred to Pacific Lumber Company consisted of cash $1,240.67; furniture and fixtures valued on the books of A. F. Thane & Company at $9,682.23; accounts receivable valued on the books of A. F. Thane & Company at $2,731.73, notes receivable valued on the books of A. F. Thane & Company at $3,220.60; claims pending settlement valued on the books of A. F. Thane & Company at $3,685.49. The total value at which these assets were carried on

A. F. Thane & Company's books and at which value they were taken over in liquidation by Pacific Lumber Company was $20,560.72. These assets, so valued, were applied by Pacific Lumber Company on its books to the advances, accounts paid and other indebtednesses of A. F. Thane & Company to Pacific Lumber Company.

The net amount due to Pacific Lumber Company from A. F. Thane & Company as a result of all the transactions enumerated hereinabove (Paragraph III) was $953,134.49. The Pacific Lumber Company left as an asset on its books the sum of $1 to reflect the value of its stock holdings in A. F. Thane & Company and the sum of $1 to reflect the value of the accounts receivable of A. F. Thane & Company. Pacific Lumber Company, plaintiff herein, at the close of 1923 charged off on its books the balance, to wit, $953,134.49, as a debt ascertained to be worthless during the tax year 1923. [22]

IV.

During the years 1920, 1921, 1922 and 1923, the plaintiff the Pacific Lumber Company of Maine was affiliated with A. F. Thane & Company and the Pacific Lumber Company, an Illinois corporation. Separate tax returns were filed by each of these companies and a consolidated return was filed, showing the operations of the three companies. Taxes were paid upon the net income shown in the consolidated returns. The separate and consolidated returns showed the following:

For the tax year 1920 Pacific Lumber Company of Maine, separate return, reported net income $2,-262,959.39; Pacific Lumber Company of Illinois separate return a loss amounting to $23,052.35; A. F. Thane & Company separate return net loss $443,-821.95; total net loss $466,874.30. The consolidated return of the three companies reported a net profit of $1,796,085.09 and taxes were paid upon this last amount.

For the tax year 1921, the Pacific Lumber Company of Maine, separate return, reported net income $579,624.88; Pacific Lumber Company of Illinois, separate return, reported net income $18,-314.97; A. F. Thane & Company, separate return, reported a net loss $548,166.82. The consolidated return of the three companies showed a net loss of $150,226.97 and no tax was paid.

For the tax year 1922 the Pacific Lumber Company of Maine upon its separate return showed a net income of $1,266,450.31. The Pacific Lumber Company of Illinois by its separate return showed a net income of $31,198.03; A. F. Thane & Company by its separate return reported a net loss of $344,-791.49. The consolidated returns of the three companies showed a net income amounting to $952,-857.05. Upon the consolidated return the consolidated net loss for 1921, amounting to $150,226.97 was carried forward, as permitted by law, and the total net profit, [23] upon which taxes were paid for the tax year 1922 was $802,630.08.

For the tax year 1923, the Pacific Lumber Company of Maine, separate return, showed a net income of $1,379,494.78. The separate return of the Pacific Lumber Company of Illinois showed a net income of $8,809.83. A. F. Thane & Company, separate return, showed a net loss of $229,942.15. The net income shown upon the consolidated return for the three companies for the tax year 1923 amounted to $1,138,362.46. Said consolidated return, with separate returns was filed on or about April 14, 1924. Upon said consolidated net income of $1,158,362.46 the Pacific Lumber Company paid to the defendant the sum of $144,795.31 as the total income tax for the calendar year 1923, said amount being paid as follows:

March 20, 1924	$36,200.00
June 1, 1924	$36,198.44
Sept. 15, 1924	$36,198.44
Dec. 7, 1924	$36,198.43

Thereafter on or about April 30, 1928, upon an examination and an audit by the supervising Internal Revenue Agent at San Francisco, plaintiff's corrected net income for the year 1923 was found to be $1,144,977.80 as taxable for said year 1923, and the amount of $143,122.23 was found to be the total amount of income tax due upon said corrected net income. Plaintiff received from defendant a refund in the amount of $1,673.08, with interest thereon, on account of the difference between the total income tax shown to be payable upon said corrected net income and the amount shown to be payable

upon the original return. Said correction arose by reason of the supervising agent allowing the plaintiff a larger amount of depreciation upon certain of plaintiff's lumber properties than plaintiff had claimed in [24] its original return.

The details of the foregoing facts are shown in the income tax returns for the several years in question.

V.

On or about March 14, 1928, plaintiff filed with defendant and thereafter defendant transmitted to the Commissioner of Internal Revenue, a claim for refund of said total amount of $143,122.23 of income tax theretofore paid, together with interest thereon in the sum of $37,645.90, or a total of $180,768.13. Said claim was made pursuant to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof. Thereafter said claim for refund was rejected and disallowed by the Commissioner of Internal Revenue on or about June 14, 1928. No part of the aforesaid sum of $143,122.23 and no part of the interest thereon has been refunded or repaid to plaintiff by defendant.

PILLSBURY, MADISON & SUTRO,
(Attorneys for Plaintiff)
GEO. J. HATFIELD,
ESTHER B. PHILLIPS,
(Attorneys for Defendant)

[Endorsed]: Filed February 19, 1931. [25]

[Title of Court and Cause.]

ORDER FOR JUDGMENT.

ORDERED that plaintiff have judgment against defendant in the sum of one hundred forty-three thousand one hundred twenty-two and 23/100 (143,122.23) dollars with legal interest and costs of suit.

Let judgment be entered accordingly.

Dated, January 13, 1932.

A. F. ST. SURE,
U. S. District Judge.

[Endorsed]: Filed Jan 14, 1932. [26]

In the Southern Division of the United States District Court for the Northern District of California.

No. 18,725-S.

THE PACIFIC LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN P. McLAUGHLIN, as Collector of the United States Internal Revenue for the First District of California,

Defendant.

JUDGMENT.

This cause having come on regularly for trial on the 19th day of February, 1931, before the court

sitting without a jury, a trial by jury having been waived by oral stipulation, Eugene D. Bennett, Esq., appearing as attorney for plaintiff, and Esther B. Phillips, Assistant United States Attorney, appearing as attorney for defendant, and the trial having been proceeded with, and documentary evidence and an agreed statement of facts having been introduced and closed, and the cause having been submitted to the court for consideration and decision, and the court on the 13th day of January, 1932, after due deliberation having rendered its decision and ordered that judgment be entered herein in favor of plaintiff as prayed for the sum of one hundred forty-three thousand one hundred twenty-two and 23/100 dollars ($143,122.23), as principal, with interest thereon to the 13th day of January, 1932, in the total sum of sixty-four thousand nine hundred seventy-seven and 53/100 dollars ($64,977.53), with interest on said sums from the 13th day of January, 1932, at six per cent (6%) per annum until paid, together with costs; [27]

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the court that The Pacific Lumber Company, a corporation, plaintiff, do have and recover of and from John P. McLaughlin, as Collector of the United States Internal Revenue for the First District of California, defendant, the sum of one hundred forty-three thousand one hundred twenty-two and 23/100 dollars ($143,122.23) with interest

thereon to the 13th day of January, 1932, in the total sum of sixty-four thousand nine hundred seventy-seven and 53/100 dollars, ($64,977.53), and with interest on the said sums from the 13th day of January, 1932, at the rate of six per cent (6%) per annum until paid, together with its costs herein expended taxed at $

Judgment entered this 14th day of January, 1932.

WALTER B. MALING,
Clerk. [28]

[Title of Court and Cause.]

JUDGMENT AS TO INTEREST.

ORDERED that the interest recoverable by the plaintiff against the defendant on the sum of one hundred forty-three thousand one hundred twenty-two and 23/100 dollars ($143,122.23) under the judgment rendered on January 13, 1932, shall be computed from the respective dates on which the said sum was paid by plaintiff to defendant under protest, and to and including the 13th day of January, 1932, with interest on the sum so computed at six (6) per cent until paid.

Dated, January 18, 1932.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Jan 20, 1932. [29]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that this cause came regularly on for trial on the 19th day of February, 1931, before the above-entitled court, Honorable A. F. St. Sure presiding, jury being waived by the parties, the plaintiff appearing by its attorneys, Messrs. Pillsbury, Madison & Sutro and Eugene D. Bennett, and the defendant appearing by his attorneys, Geo. J. Hatfield, United States Attorney, and Esther B. Phillips, Assistant United States Attorney. Thereupon the following proceedings were had:

Counsel for plaintiff directed the attention of the Court to an agreed statement of facts signed by the parties and filed in the records of the cause. This stipulation appears elsewhere in the record, and is hereby made a part of this Bill.

AGREED STATEMENT OF FACTS.

IT IS HEREBY STIPULATED AND AGREED that the above entitled case may be tried by the court sitting without a jury. It is further stipulated and agreed by and between the parties hereto that the following facts are true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated, or as admitted in the pleadings.

I.

At all times herein mentioned plaintiff was and is a corporation organized and existing under and by virtue of the laws of the State of Maine, and having its principal office in the First United States Revenue District of California. That defendant now is and at all times since November 21, 1921, has been the duly appointed, qualified and acting Collector of United States Revenue for the First District of California, having his office in the City and County of San Francisco in the Southern Division of the Northern District of California, and is a citizen and resident of the State of California and of the Southern Division of the Northern District of California.

II.

During the year 1918, A. F. Thane & Company, a corporation organized and existing under and by virtue of the laws of the State of California, had an authorized capital stock of 1,000 shares of the par value of $100 each, of which 600 shares were issued and outstanding. The plaintiff Pacific Lumber Company owned 540 shares, which it had purchased from said A. F. Thane & Company at a cost of $31,500.00. A. F. Thane owned the remaining 60 shares. In 1920, the capital stock of A. F. Thane & Company was increased to 5,000 shares of the par value of $100 each. Pacific Lumber Company subscribed for 3960 additional shares, for which it paid $100 each, making its total holdings 4500

shares. A. F. Thane subscribed for additional stock, making his total holdings 500 shares. In 1921 Pacific Lumber Company purchased A. F. Thane's holdings and paid $52,125.00. The total sum paid by Pacific Lumber Company for the 5,000 shares of stock which it owned at the end of 1921 was $479,625.00.

III.

During the period between March 17, 1921, and the close of December, 1923, Pacific Lumber Company and A. F. Thane & Company had financial arrangements with each other by which Pacific Lumber Company from time to time advanced cash to A. F. Thane & Company, paid accounts for, and assumed indebtednesses of A. F. Thane & Company which it had guaranteed, the total sum of such cash advances, accounts paid and indebtednesses assumed amounting to $1,234,157.09. A. F. Thane & Company from time to time during this interval made partial repayments of said advances, accounts, etc., the total of which repayments at the close of December, 1923, amounted to $260,461.88. At the close of 1923 A. F. Thane & Company was duly dissolved by order and decree of the Superior Court of the City and County of San Francisco, State of California, and was liquidated by transfer of all of its remaining assets to Pacific Lumber Company and by closing its books and ceasing to do business. At the close of the year 1923 the assets thus transferred to Pacific Lumber Company consisted of

cash $1,240.67; furniture and fixtures valued on the books of A. T. Thane & Company at $9,682.23; accounts receivable valued on the books of A. F. Thane & Company at $2,731.73, notes receivable valued on the books of A. F. Thane & Company at $3,220.60; claims pending settlement valued on the books of A. F. Thane & Company at $3,685.49. The total value at which these assets were carried on A. F. Thane & Company's books and at which value they were taken over in liquidation by Pacific Lumber Company was $20,560.72. These assets, so valued, were applied by Pacific Lumber Company on its books to the advances, accounts paid and other indebtednesses of A. F. Thane & Company to Pacific Lumber Company.

The net amount due to Pacific Lumber Company from A. F. Thane & Company as a result of all the transactions enumerated hereinabove (Paragraph III) was $953,134.49. The Pacific Lumber Company left as an asset on its books the sum of $1 to reflect the value of its stock holdings in A. F. Thane & Company and the sum of $1 to reflect the value of the accounts receivable of A. F. Thane & Company. Pacific Lumber Company, plaintiff herein, at the close of 1923 charged off on its books the balance, to wit, $953,134.49, as a debt ascertained to be worthless during the tax year 1923.

IV.

During the years 1920, 1921, 1922 and 1923, the plaintiff the Pacific Lumber Company of Maine was

affiliated with A. F. Thane & Company and the Pacific Lumber Company, an Illinois corporation. Separate tax returns were filed by each of these companies and a consolidated return was filed, showing the operations of the three companies. Taxes were paid upon the net income shown in the consolidated returns. The separate and consolidated returns showed the following:

For the tax year 1920 Pacific Lumber Company of Maine, separate return, reported net income $2,-262,959.39; Pacific Lumber Company of Illinois separate return a loss amounting to $23,052.35; A. F. Thane & Company separate return net loss $443,-821.95; total net loss $466,874.30. The consolidated return of the three companies reported a net profit of $1,796.085.09 and taxes were paid upon this last amount.

For the tax year 1921, the Pacific Lumber Company of Maine, separate return, reported net income $379,624.88; Pacific Lumber Company of Illinois, separate return, reported net income $18,-314.97; A. F. Thane & Company, separate return, reported a net loss $548,166.82. The consolidated return of the three companies showed a net loss of $150,226.97 and no tax was paid.

For the tax year 1922 the Pacific Lumber Company of Maine upon its separate return showed a net income of $1,266,450.51. The Pacific Lumber Company of Illinois by its separate return showed a net income of $31,198.03; A. F. Thane & Company

by its separate return reported a net loss of $344,-791.49. The consolidated returns of the three companies showed a net income amounting to $952,-857.05. Upon the consolidated return the consolidated net loss for 1921, amounting to $150,226.97 was carried forward, as permitted by law, and the total net profit, upon which taxes were paid for the tax year 1922 was $802,630.08.

For the tax year 1923, the Pacific Lumber Company of Maine, separate return, showed a net income of $1,379,494.78. The separate return of the Pacific Lumber Company of Illinois showed a net income of $8,809.83. A. F. Thane & Company, separate return, showed a net loss of $229,942.15. The net income shown upon the consolidated return for the three companies for the tax year 1923 amounted to $1,138,362.46. Said consolidated return, with separate returns was filed on or about April 14, 1924. Upon said consolidated net income of $1,-158,362.46 the Pacific Lumber Company paid to the defendant the sum of $144,795.31 as the total income tax for the calendar year 1923, said amount being paid as follows:

March 20, 1924	$36,200.00
June 1, 1924	$36,198.44
Sept. 15, 1924	$36,198.44
Dec. 7, 1924	$36,198.43

Thereafter on or about April 30, 1928, upon an examination and an audit by the supervising Internal Revenue Agent at San Francisco, plaintiff's corrected net income for the year 1923 was found

to be $1,144,977.80 as taxable for said year 1923, and the amount of $143,122.23 was found to be the total amount of income tax due upon said corrected net income. Plaintiff received from defendant a refund in the amount of $1,673.08, with interest thereon, on account of the difference between the total income tax shown to be payable upon said corrected net income and the amount shown to be payable upon the original return. Said correction arose by reason of the supervising agent allowing the plaintiff a larger amount of depreciation upon certain of plaintiff's lumber properties than plaintiff had claimed in its original return.

The details of the foregoing facts are shown in the income tax returns for the several years in question.

V.

On or about March 14, 1928, plaintiff filed with defendant and thereafter defendant transmitted to the Commissioner of Internal Revenue, a claim for refund of said total amount of $143,122.23 of income tax theretofore paid, together with interest thereon in the sum of $37,645.90, or a total of $180,-[illegible]. Said claim was made pursuant to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof. Thereafter said claim for refund was rejected and disallowed by the Commissioner of Internal Revenue on or about June 14, 1928. No part of the aforesaid sum of $143,122.23 and no

part of the interest thereon has been refunded or repaid to plaintiff by defendant.

PILLSBURY, MADISON & SUTRO,
(Attorneys for Plaintiff)

GEO. J. HATFIELD,
ESTHER B. PHILLIPS,
(Attorneys for Defendant)

[Endorsed]: Filed February 19, 1931.

The following documents were also admitted in evidence:

Copy of the consolidated income and profits tax returns of plaintiff, Pacific Lumber Company of Maine, Pacific Lumber Company of Illinois, and A. F. Thane & Company for the year 1920 was marked Plaintiff's Exhibit "A" (1). [30]

The separate income tax returns for 1920 of said corporations were marked Plaintiff's Exhibit "A" (2), "A" (3) and "A" (4), respectively. All of these exhibits are attached to this Bill of Exceptions and are made a part hereof.

Copy of the consolidated income and excess profits tax return for the year 1921 of Plaintiff, the Pacific Lumber Company of Maine, Pacific Lumber Company of Illinois, and A. F. Thane & Company was marked Plaintiff's Exhibit "B" (1).

The separate income and profits tax returns for 1921 of said corporations were marked Plaintiff's Exhibits "B" (2), "B" (3) and "B" (4), respectively. Said exhibits are attached to this Bill of Exceptions and are made a part hereof.

Copy of the consolidated income tax return of plaintiff, Pacific Lumber Company of Maine, Pacific Lumber Company of Illinois and A. F. Thane & Company for 1922, was marked Plaintiff's Exhibit "C" (1).

The separate tax returns for said corporations for the year 1922 were marked Plaintiff's Exhibit "C" (2), "C" (3) and "C" (4), respectively. Said exhibits are attached to this Bill of Exceptions and are made a part hereof.

Copy of the consolidated tax return of plaintiff, Pacific Lumber Company of Maine, Pacific Lumber Company of Illinois and A. F. Thane & Company for 1923 was marked Plaintiff's Exhibit "D" (1). The separate income tax returns of said corporations were marked Plaintiff's Exhibit "D" (2), "D" (3) and "D" (4). Said exhibits are attached to this Bill of Exceptions and are made a part hereof. [31]

Whereupon plaintiff rested.

The defendant moved for a nonsuit. Said motion was taken under submission by the court. The defendant then directed attention to the stipulation of facts filed in the records of the case and rested.

Plaintiff moved for a judgment in plaintiff's favor as prayed in the complaint. Defendant moved for a judgment in defendant's favor as prayed in the answer.

Plaintiff's motion and the defendant's two motions were taken under submission by the court.

Thereafter, briefs were filed and the cause was taken under submission by the court.

On January 14, 1932, the court denied the defendant's motion for a nonsuit to which the defendant duly excepted, and said exception is hereby assigned as

Defendant's Exception No. 1.

The court granted the plaintiff's motion for judgment as prayed in the complaint to which the defendant excepted, the said exception being

Defendant's Exception No. 2.

The court denied the defendant's motion for judgment, to which the defendant excepted, said exception being

Defendant's Exception No. 3.

WHEREFORE, defendant, within the time required by law and the rules of court, presents this his Bill of Exceptions and prays that the same be settled, allowed and approved by the court.

GEO. J. HATFIELD,
United States Attorney,
ESTHER B. PHILLIPS,
Asst. United States Attorney,
Attorneys for Defendant. [32]

ORDER SETTLING AND ALLOWING BILL OF EXCEPTIONS.

The foregoing Bill of Exceptions containing all the evidence in the cause is correct in all respects and is hereby SETTLED and ALLOWED as the Defendant's Bill of Exceptions for use on appeal in the above-entitled action.

It is FURTHER ORDERED that the Stipulation of Facts and the Exhibits introduced in evidence upon the trial of said action may be withdrawn and when duly certified and authenticated by the Clerk of this Court, may be transferred to the Clerk for the United States Circuit Court of Appeals for the Ninth Circuit to become a part of the record on appeal, and when so transmitted to said United States Circuit Court of Appeals may be referred to by the parties hereto and by said Court as a part of said Bill of Exceptions.

Dated, San Francisco, Calif.,
January 29, 1932.

A. F. ST. SURE,
United States District Judge.

Service of the within.....by copy admitted this 18th day of Jan., 1932.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 29, 1932. [33]

[Title of Court and Cause.]

PETITION FOR APPEAL AND ORDER ALLOWING APPEAL.

To the Honorable A. F. St. Sure, United States District Judge:

The defendant herein feeling aggrieved by the judgment entered in this case on or about the 14th day of January, 1932, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignment of Errors filed herewith, and prays that this appeal be allowed, that a citation be issued as provided by law, that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the Clerk of said Circuit Court of Appeals under the rules of such court, and that no bond or other security be required of the defendant upon said appeal.

GEO. J. HATFIELD,
United States Attorney,
ESTHER B. PHILLIPS,
Asst. United States Attorney,
Attorneys for Defendant.

ORDERED that the appeal be allowed and that defendant shall not be required to give any bond or other security upon said appeal.

A. F. ST. SURE,
United States District Judge.

Service of the within Petition, etc., by copy admitted this 4th day of April, 1932.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Apr. 4, 1932. [34]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes the defendant, John P. McLaughlin, United States Collector of Internal Revenue for the First Collection District of California, and files the following Assignment of Errors upon which he will rely in his petition for review of the judgment entered by the above-entitled court in this cause on or about the 14th day of January, 1932.

I.

The court erred in rendering and entering its decision and judgment in favor of plaintiff and against the defendant.

II.

The court erred in rendering and entering a judgment in favor of plaintiff in the whole amount prayed for in the complaint ($143,122.23) and in determining that a refund in said amount was due to plaintiff on account of an over-payment of taxes by plaintiff for the tax year 1923.

III.

The court erred in granting plaintiff's motion for judgment in its favor as prayed in the complaint.

IV.

The court erred in denying defendant's motion for a [35] nonsuit.

V.

The court erred in denying defendant's motion for a judgment in his favor.

VI.

The court erred in holding and determining that following the dissolution and liquidation of A. F. Thane & Company at the close of 1923, and the taking over of its remaining assets by the plaintiff, Pacific Lumber Company, the plaintiff was entitled to a deduction from its gross income for the year 1923, as a loss ascertained during the said year, in the entire amount of its investment in the stock of A. F. Thane & Company, to-wit, $474,625.00, and was further entitled to a deduction from its gross income for said year, as a loss ascertained during said year, the sum of $953,134.49, on account of advances made to said A. F. Thane & Company.

VII.

The court erred in holding and determining that following the dissolution and liquidation of A. F. Thane & Company, at the close of 1923, and the

taking over of its remaining assets by the plaintiff, Pacific Lumber Company, the plaintiff was entitled to take as a deductible loss ascertained during the year 1923 losses upon the liquidation of A. F. Thane & Company amounting to $474,625.00 and $953,-134.49, without offsetting against either of said losses upon said liquidation the loss amounting to $229,942.15 sustained by A. F. Thane & Company during the year 1923, of which loss plaintiff received the benefit in the consolidated return filed by plaintiff for said year 1923 and upon which plaintiff paid the tax shown.

VIII.

The court erred in holding and determining that following the dissolution and liquidation of A. F. Thane & Company at the close of 1923, and the taking over of its remaining assets by the plaintiff, the plaintiff was entitled to take as deductible losses ascertained during the year 1923 a loss of [36] $474,625.00 and a loss of $953,134.49, without offsetting against said sums, or either of them, the losses sustained by said A. F. Thane & Company during the years 1920, 1921 and 1922, amounting to $443,821.95, $548,166.82 and $344,791.49, respectively, of which losses plaintiff received the benefit in the consolidated returns filed by plaintiff for said years 1920, 1921 and 1922 and upon which taxes were paid as shown upon said returns.

WHEREFORE defendant prays that the judgment of the District Court be reversed and that

judgment be entered in favor of defendant, and that said cause be remanded to the District Court with instructions to enter such judgment in favor of defendant herein, or to enter such other judgment in said cause as in the opinion of the United States Circuit Court of Appeals for the Ninth Circuit is deemed meet and proper.

GEO. J. HATFIELD,
United States Attorney,
ESTHER B. PHILLIPS,
Asst. United States Attorney,
Attorneys for Defendant.

Service of the within assignment of errors by copy admitted this 4th day of April, 1932.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Apr. 4, 1932. [37]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To Plaintiff above-named, and to Messrs. Pillsbury, Madison & Sutro, its attorneys:

Please take notice that the defendant hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered in this cause on or about January 14, 1932.

Dated, April 4, 1932.

GEO. J. HATFIELD,
United States Attorney,
ESTHER B. PHILLIPS,
Asst. United States Attorney,
Attorneys for Defendant.

Service of the within Notice of Appeal by copy admitted this 4th day of April, 1932.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Apr. 4, 1932. [38]

[Title of Court and Cause.]

PRAECIPE.
(FOR RECORD ON APPEAL.)

To the Clerk of said Court:

Sir:

Please prepare and transmit to the Clerk of the United States District Court of Appeals for the Ninth Circuit, a transcript of the record in the above-entitled case for the use of said Circuit Court of Appeals, by including the following:

The Judgment Roll.
Stipulation Waiving Trial by Jury.
Stipulation of Facts.
Bill of Exceptions.
Opinion of the Court.
Assignment of Errors.
Petition and Order Allowing Appeal.
Notice of Appeal.
This Praecipe.

GEO. J. HATFIELD,
United States Attorney,
ESTHER B. PHILLIPS,
Asst. United States Attorney,
Attorneys for Defendant.

Service of the within Praecipe by copy admitted this 4th day of April, 1932.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Apr. 4, 1932. [39]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 39 pages, numbered from 1 to 39 inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is $6.80; that said amount has been charged against the United States and the original Citation issued in said suit is hereby annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 12 day of April, A. D. 1932.

[Seal] WALTER B. MALING,
Clerk United States District Court for the North ern District of California.

By B. E. O'Hara,
Deputy Clerk. [40]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America.—ss.

The President of the United States of America
To Pacific Lumber Company, a corporation, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California wherein JOHN P. McLAUGHLIN, Collector of Internal Revenue, is appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. St. Sure, United States District Judge for the Northern District of California this 4th day of April, A. D. 1932.

A. F. ST. SURE,
United States District Judge.

Service of the within Citation by copy admitted this 4 day of April, 1932.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

[Endorsed]: Filed Apr. 4, 1932. Walter B. Maling, Clerk. By B. E. O'Hara, Deputy Clerk. [41]

[Endorsed]: No. 6816. United States Circuit Court of Appeals for the Ninth Circuit. John J. McLaughlin, Collector of Internal Revenue for the First District of California, Appellant, vs. Pacific Lumber Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division. Filed April 12, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN P. MCLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Upon appeal from the District Court of the United States for the Northern District of California, Southern Division.

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.

At a stated term, to wit: The October term, A.D. 1932, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday the thirtieth day of January, in the year of our Lord one thousand nine hundred and thirty-three.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, presiding; Honorable William H. Sawtelle, Circuit Judge; Honorable Frank H. Norcross, District Judge.

No. 6816

JOHN P. MCLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Order of submission

Ordered above cause argued by Miss Esther B. Phillips, assistant United States attorney, counsel for appellant, and by Mr. Felix T. Smith, counsel for appellee, and submitted to the court for consideration and decision.

At a stated term, to wit: The October term, A.D. 1932, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Wednesday the sixth day of September in the year of our Lord one thousand nine hundred and thirty-three.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, presiding; Honorable William H. Sawtelle, Circuit Judge.

No. 6816

JOHN P. McLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Order directing filing of opinion and filing and recording of judgment

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 6816. Sept. 6, 1933.

JOHN P. McLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Before: WILBUR and SAWTELLE, Circuit Judges, and NORCROSS, District Judge.

SAWTELLE, *Circuit Judge:*

From a judgment rendered by the District Court in favor of the Pacific Lumber Company, plaintiff below, for recovery of income taxes paid to the collector of internal revenue, the latter appeals. The judgment was for $143,122.23, representing income taxes paid by the appellant for the year 1923. Interest on that sum at the rate of six percent to January 13, 1932, totaling $64,977.53, and interest on the two foregoing sums from January 13, 1932, until paid, also at six percent, were allowed by the lower court. The date of January 13, 1932, was the one on which the judgment of the District Court was rendered. The case was tried before the court, without a jury, on an agreed statement of facts, together with the income tax returns referred to in the stipulation.

The appellee is a Maine corporation, with its principal office in California. During the years 1920, 1921, 1922, and 1923 it was affiliated with two subsidiary corporations, the Pacific Lumber Com-

pany of Illinois and A. F. Thane & Company of California. During those years the operations of the three affiliates showed the following: The Thane Company suffered heavy loss each year; the Illinois Company showed a loss in 1920 and profits in 1921, 1922, and 1923; and the Maine Company, or parent concern, made substantial profits each year.

According to the agreed statement of facts, "separate tax returns were filed by each of these companies and a consolidated return was also filed, showing the operations" of the three corporations. "Taxes were paid upon the net income shown in the consolidated returns." In his brief, the appellant states, and, we believe, correctly, that, though each company filed a separate return, no tax was computed thereon.

By the end of 1921 the appellee was the owner of the entire 5,000 shares of stock in the Thane Company, at a total cost of $479,625.

During 1923 the Thane Company liquidated its business and assets, at a total loss of $106,915.01. The remaining assets were valued on its books at $20,560,72, and were taken over by the appellee at the same figure, as a final distribution in liquidation to it as sole stockholder at the time of dissolution. The assets transferred at the book value of $20,560.72 to the parent company were applied by the latter to reduce the amount owing to it by its dissolved subsidiary to the final figure of $953,134.49.

The cost of the stock of the Thane Company to the appellee, or parent company, was, as we have seen, $479,625, and the indebtedness remaining due to the appellee, after final distribution to it was $953,134.49. The appellee did not at the time of filing the separate or consolidated tax returns for 1923 claim either of the sums just mentioned, as deductions, but now asserts the right to deduct them in the consolidated tax return of the affiliated companies as losses that occurred in 1923.

It is with the 1923 tax liability that the present case is concerned. The separate and consolidated returns for that year showed the net income of the affiliated companies to be $1,158,362.46, which was reduced by the Bureau to $1,144,977.80. The tax on this latter amount was $143,122.23, and was regularly paid during 1924 in quarterly installments.

In March 1928 the appellee filed a claim for refund of the entire tax thus paid, with interest, upon the theory that it had suffered losses during 1923 amounting to $1,432,759.49, which it failed to deduct from the gross income reported on its separate return. If losses in this amount are deductible for 1923, the net income reported would be turned into a deficit, and the consolidated net income of $1,144,977.80 would be wiped out, no tax at all being payable.

The losses of $1,432,759.49 that the appellee claims that it should have deducted consist of the purchase price of the Thane stock,

$479,625, and the balance owing to the appellee from the Thane Company at the end of 1923, or $953,134.49.

The appellant's principal contentions are:

1. That the losses of a parent corporation in connection with the liquidation and dissolution of a wholly owned subsidiary corporation are not allowable deductions for income-tax purposes in a year for which a consolidated return has been filed, which includes the subsidiary's activities up to the date of the latter's dissolution.

2. If the losses of the parent in this case upon the liquidation and dissolution of its subsidiary in 1923 are to be construed for tax purposes as its own losses, and not the result of intercompany transactions, the facts show that these losses were fully and effectively recovered by the appellee for tax purposes by deductions taken in the consolidated returns for 1920 to 1923, inclusive, for the operating losses of the subsidiary.

As to the first contention, however, the appellant makes the following concession in his brief:

"It would be idle for us to deny that upon the broad question whether a parent company may deduct a loss of investment on the liquidation of a subsidiary, the present trend of decisions, both in the Board of Tax Appeals and in the courts, is in favor of the taxpayer."

Accordingly, we will devote our discussion principally to the appellant's second proposition.

After the appellant's brief was filed in this court, the case of *Burnet* v. *Aluminum Goods Co.* (287 U.S. 544), was decided by the Supreme Court. As was indicated in the appellant's brief, the decision of the Supreme Court has clarified the whole subject.

In order to appreciate the parallelism between the facts in the Aluminum case and those at bar, it will be helpful to quote the statement of the Supreme Court, at pages 545, 546:

"In 1914 respondent, a New Jersey manufacturing corporation, purchased all the capital stock of the Aluminum Sales and Manufacturing Company, a New York corporation. From that time until its liquidation, carried on in 1917, the Sales Company was principally engaged in selling goods manufactured by the respondent. In February 1918 is was dissolved. The operation of the Sales Company reflected net losses during the years 1914, 1915, and 1916, as well as in the year 1917. As a result of the operating losses and the liquidation of the Sales Company, respondent suffered the loss of certain sums advanced to the Sales Company, and of the total investment in its stock.

"For 1917 the two corporations filed separate returns for computation of the normal income tax, and a consolidated return for the purpose of the excess-profits tax. In its separate return respondent claimed, and the Commissioner allowed, deduction of an aggregate loss made up of respondent's advances to the Sales Company, and the cost of its stock, less the value of equipment and goodwill realized on its liquidation. This loss, reduced by the 1917 operating loss

of the Sales Company, was deducted from gross income in the consolidated return. The Commissioner's refusal to allow the deduction was sustained by the Board of Tax Appeals (22 B.T.A. 1), whose determination was reversed by the Circuit Court of Appeals for the Seventh Circuit (56 F. (2d) 568)."

Upon the foregoing state of facts, the Supreme Court said:

"The purpose of requiring consolidated returns by affiliated corporations was, as the Government contends, to impose the war-profits tax, according to true net income and invested capital of what was, in practical effect, a single business enterprise, even though conducted by means of more than one corporation. Primarily, the consolidated return was to preclude reduction of the total tax payable by the business, viewed as a unit, by redistribution of income or capital among the component corporations by means of intercompany transactions. * * *

"In the present case, even though the affiliation continued, it does not follow as a matter of law that the loss was not rightly deducted in the consolidated return. [Statutes and a Treasury Regulation summarized]. It is conceded that the loss of respondent's advances to the Sales Company and the investment in its stock was sustained in 1917, was deductible therefore, if at all, in that year, and might properly have been deducted by respondent in a separate return, if a separate return had been permissible. But the Government insists that the loss cannot be deducted in the mandatory consolidated return for 1917 because it occurred as the result of 'intercompany' transactions.

"We need not decide whether the loss resulted from intercompany transactions within the meaning of the regulations under later statutes which broadly exclude from the consolidated returns profit or loss upon all such transactions. For neither the Revenue Act of 1917, nor §1331 of the Revenue Act of 1921, nor the regulations under them, prescribe specifically the method of making up the consolidated return *or require the elimination from the computation of the tax of the results of all intercompany transactions.*" (Italics our own.) (Pages 547–549.)

At this juncture it may be remarked that though the Revenue Act of 1917 is not involved in the present case, sections of the Revenue Act of 1921 are quoted as pertinent in the appellant's brief.

It is likewise observable that, in a footnote to the text just quoted, the Supreme Court cites, at page 549, article 636 of Treasury Regulations 65, under the Revenue Act of 1924. The pertinent language of that article is identical with that of article 636 of Treasury Regulations 62, under the Revenue Act of 1921, which is relied upon by the appellant herein. The language of article 636 in each set of regulations is as follows:

"Subject to the provisions covering the determination of taxable net income of separate corporations, *and subject further to the elimination of intercompany transactions* (whether or not resulting in any profit or loss to the separate corporations), the consolidated

taxable net income shall be the combined net income of the several corporations consolidated. * * *"

It is clear that the Supreme Court did not regard these provisions as barring the taxpayer's right to deduct losses resulting from *every* intercompany transaction, for the court continued:

"These provisions plainly do not lay down any rigid rule of accounting to be applied to consolidated returns which would exclude from the computation of taxable income the results of every intercompany transaction, regardless of its effect upon the capital or the net gains or losses of the business of the affiliated corporations. Instead, they merely disclose the purpose underlying regulations and statute to prevent, through the exercise of a common power of control any intercompany manipulations which would distort invested capital or the true income of the unitary business carried on by the affiliated corporations. Hence, no method of accounting, in calculating taxable income upon the consolidated return, can be upheld, which would withhold from the taxpayer all benefit of deduction for losses actually sustained and deductible under the sections governing the computation of taxable income, and which at the same time would not further, in some way, the very purpose for which consolidated returns are required.

"Such we think is the effect of the method adopted by the Commissioner."

From the foregoing language of the Supreme Court, it is clear that the question of "intercompany transaction" vel non is not the decisive one in the instant case, despite the space devoted to it in the briefs. A different test is the one indicated by the Supreme Court, namely, the *effect* of the intercompany transaction "upon the capital or the net gains or losses of the business of the affiliated corporations", and whether or not any proposed calculation of taxable income upon the consolidated return "would withhold from the taxpayer all benefit of deduction for losses actually sustained and deductible under the sections governing the computation of taxable income", etc.

This same broad test is again laid down by the Supreme Court in the closing paragraph of the opinion in the Aluminum case:

"The loss was a real one, suffered by respondent as a separate corporate entity, and it was equally a loss suffered by the single business carried on by the two corporations during the period of their affiliation, ultimately reflected in the 1917 loss of capital invested in that business. While equitable principles of accounting applied to the calculation of the net income of the business unit do not permit deduction of the loss twice, they do require its deduction once. Hence, the loss was deductible in 1917 under the statute and regulations controlling computation of taxable income, and its deduction is not forbidden by the regulations applicable to the consolidated return. Article 77 and 78 of Treasury Regulations 41 would, indeed, require the elimination of any losses resulting from intercompany transactions the inclusion of which would defeat the purpose of

consolidated returns to tax the true income of the single business of affiliated corporations, calculated by correct accounting methods. The deductions claimed here had no such effect."

The foregoing interpretation of the Aluminum case is supported by the language used by the Supreme Court in *Atlantic City Co.* v. *Commissioner*, 288 U.S. 152, 154, decided on February 6, 1933:

"The purpose of the Congress was to secure substantial equality among stockholders who ultimately bear the burden of taxation and to prevent evasion through the manipulation of intercompany transactions. [Authorities, including the Aluminum case, cited.] The requirement of consolidated returns was 'based upon the principle of levying the tax according to the true net income and invested capital of a single business interprise, even though the business is operated through more than one corporation.' Treasury Regulations No. 45, art. 631."

Applying the doctrine of the Aluminum case to the facts at bar, after an examination of the record and of the exhibits, we do not find that there is evidence to sustain the appellant's allegation of double deduction. The appellant has failed to establish any specific instance of such deduction. Mere similarity of totals as between different years does not justify the inference that the deduction is a double one. In the words of the Supreme Court, "the deductions claimed here had no such effect."

On the other hand, we believe that the appelle has established its right to the deductions, and that it is entitled to the refund in question.

The matter of interest on the amount claimed as a refund is also in controversy here. As we have already seen, interest was allowed at six percent from the dates of payment to the date of the rendering of the judgment, thereafter on the whole amount at six percent until paid. In opposition to this rate of interest, the appellant cites section 319 of the Act of June 30, 1932 [28 U.S. C.A. 811 (a),], in which the rate of interest in a case of this kind is fixed at four percent.

As the appellee points out, however, on January 30, 1933, the day on which the instant case was argued before this court, the President of the United States signed the deficiency appropriation bill (H.R. 14436, Public No. 325, 72d Congress), pages 7–8, section 2 of which provides in part as follows:

" * * *

"Section 319 of the Act of June 30, 1932 (Economy Act) (47 Stat. 412), shall not apply to any judgment rendered against the United States prior to July 1, 1932. Appropriations for the payment of any such judgment and interest thereon shall be available for the payment of principal and interest in accordance with the terms of such judgment and the appropriation therefor, notwithstanding the provisions of sections 319 and 803 of such act."

See also section 14 of title II, Public No. 428, 72d Congress, page 31, approved March 3, 1933.

Since the "judgment as to interest" in the present case was dated before July 1, 1932, that is, on January 18, 1932, the foregoing section is applicable, and the rate of six percent must be upheld.

Accordingly the judgment is affirmed.

(Endorsed:) Opinion. Filed Sep. 6, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 6816

JOHN P. MCLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Judgment

Upon appeal from the District Court of the United States for the Northern District of California, Southern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed:) Judgment. Filed and entered September 6, 1933. Paul P. O'Brien, clerk.

At a stated term, to wit: The October term, A.D. 1933, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Friday the twenty-third day of February in the year of our Lord one thousand nine hundred and thirty-four.

Present: Honorable Curtis D. Wilbur, senior circuit judge, presiding; Honorable William H. Sawtelle, circuit judge; Honorable Francis A. Garrecht, circuit judge.

No. 6816

JOHN P. MCLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Order denying petition for a rehearing

Upon consideration of the petition of appellant, filed October 4, 1933, for a rehearing of above cause, and of the reply of appellee

thereto, filed October 12, 1934, and good cause therefor appearing, and by direction of the court, it is ordered that the said petition for rehearing be, and hereby is, denied.

(In the United States Circuit Court of Appeals for the Ninth Circuit)

(Endorsed:) Filed May 1, 1934. Paul P. O'Brien, clerk.

No. 6816

JOHN P. MCLAUGHLIN, COLLECTOR FOR THE FIRST DISTRICT OF CALIFORNIA, appellant

v.

PACIFIC LUMBER COMPANY, APPELLEE

Motion

Comes now John P. McLaughlin, appellant above named, by the United States attorney, his counsel, and respectfully requests that the court recall the mandate issued to the District Court for the Northern District of California on March 3, 1934.

In support of this motion the appellant respectfully states: That the appellant has this day filed his petition for a rehearing and reconsideration of this cause to which reference is hereby respectfully made.

Wherefore, the appellant respectfully prays that this motion be granted.

Dated: April 30, 1934.

H. H. MCPIKE,
United States Attorney, Attorney for Appellant.
By ESTHER B. PHILLIPS,
Assistant United States Attorney.

(Endorsed:) Motion to recall mandate. Filed May 1, 1934. Paul P. O'Brien, clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit

(Endorsed:) Filed May 1, 1934. Paul P. O'Brien, clerk.

No. 6816

JOHN P. MCLAUGHLIN, COLLECTOR FOR THE FIRST DISTRICT OF CALIFORNIA, appellant

v.

PACIFIC LUMBER COMPANY, APPELLEE

Motion

Comes now John P. McLaughlin, collector for the first district of California, appellant, by the United States attorney, his counsel,

and respectfully requests that the court grant leave to file the attached petition for a rehearing and reconsideration of this cause, and in support of this motion the appellant shows unto the court:

That the petition for rehearing heretofore filed in this cause was denied by this honorable court on February 23, 1934; that subsequent to the denial of the petition for rehearing, and on April 2, 1934, the United States Supreme Court handed down its opinion in the case of *Charles Ilfeld Co.* v. *Hernandez, collector*, not yet reported, but found in 343 C.C.H., p. 9714; and that the decision in that case requires a reversal of the decision of this court in the instant case.

Wherefore the appellant respectfully prays that this motion be granted.

H. H. McPike,
United States Attorney.

(Endorsed:) Motion for leave to file second petition for rehearing. Filed May 1, 1934. Paul P. O'Brien, clerk.

Petition for rehearing and reconsideration

To the Honorable Judges of the Circuit Court of Appeals for the Ninth Circuit:

John P. McLaughlin, Collector for the First District of California, appellant, by his counsel, the United States attorney, respectfully requests that this court grant a rehearing in this cause and reconsider its opinion and judgment heretofore filed and entered herein for the following reasons:

On April 2, 1934, the United States Supreme Court handed down its opinion in *Charles Ilfeld Co.* v. *Hernandez, Collector*, on writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit, wherein the decision of the Tenth Circuit Court of Appeals was affirmed. In that case the Supreme Court, sustaining the decision below, held that no deduction could be allowed to the taxpayers for losses sustained in respect of its investment in the stock of and advances to subsidiary corporations in the year of liquidation of the subsidiaries, whereon consolidated returns of income of the affiliated corporations for prior taxable years the taxpayer had been allowed deductions from its otherwise taxable income for operating losses sustained by the subsidiaries, the aggregate of such operating losses allowed as deductions upon the consolidated returns for the prior years being in excess of the total stock investment and advances by the taxpayer to the subsidiaries. The decision of the Supreme Court is predicated upon two grounds, (1) that the loss of stock investment and advances resulting from the liquidation was sustained during a consolidated return period in an intercompany transaction, which under the express provisions of the regulations there applicable was not an allowable deduction; (2) that to allow the loss of the stock investment and advances as a deduction in the year of liquidation of the subsidiaries, where the taxpayer had obtained the benefit by deductions from its income

in prior years for losses sustained by the subsidiaries through the medium of consolidated returns would be the practical equivalent of a double deduction which, in the absence of a provision of the statute, could not be allowed.

The first ground of the decision in the *Ilfeld* case is not applicable in the instant case. The taxable year there involved was 1929 which is governed by section 141 of the Revenue Act of 1928 and Treasury Regulations 75, promulgated under that section. The taxable year here involved is 1923, which is governed by section 240 of the Revenue Act of 1921 and articles 631 and 636 of Treasury Regulations 62. Section 141 of the Revenue Act of 1928 authorizes the filing of consolidated returns by affiliated corporations for the taxable year 1929 and subsequent years, expressly upon condition that all the corporations affiliated consent to regulations prescribed by the Commissioner with respect to such returns and further directs the Commissioner to promulgate the necessary regulations. Regulations 75, promulgated pursuant to this direction, prescribe in detail the procedure to be followed in the computation of consolidated net income and the taxes thereon. The applicable statutory provisions and regulations for the taxable year 1928 and prior years do not particularize in detail the rules for treatment of the many complex problems presented in the determination of the consolidated net income and the correct tax liability of affiliated corporations filing consolidated returns.

The second ground of the decision in the *Ilfeld* case, however, is directly applicable to the instant case and, we respectfully submit, requires a revision of the opinion of this court and a reversal of the judgment heretofore entered herein. The facts in the instant case present a striking parallel to those involved in the *Ilfeld* case. In the *Ilfeld* case the taxpayer claimed and was allowed deductions upon consolidated returns in the years prior to 1929 for operating losses sustained by its affiliated corporations in the aggregate amount of $190,431.66. In 1929 the affiliated corporations were dissolved, at which time the taxpayer had an aggregate investment in stock and advances to the subsidiaries of $168,812.49. Upon the liquidation and dissolution of its affiliated corporations the taxpayer took over the net balance of each subsidiary's assets after the payment of debts to others, such balances aggregating $38,020.38. Upon the return for the year 1929 the taxpayer claimed a deduction for the loss of the unpaid balance of its investment in stock and advances to the affiliates amounting to $130,792.11. The situation there obtaining was graphically set forth by the Supreme Court in a footnote to its opinion as follows:

	Springer Co.	Roy Co.	Combined
Operating losses claimed and deducted prior to 1929	$131,424.41	$59,007.25	$190,431.66
Investment loss claimed for 1929	86,116.05	44,676.06	130,792.11
Total losses claimed	217,540.46	103,683.31	321,223.77
Investment (stock plus advances)	109,030.27	59,782.22	168,812.49

In denying the taxpayer's claim to the deduction in 1929 of the net balance of its investment in stock and advances to the affiliated corporations the Supreme Court said:

"The allowance claimed would permit petitioner twice to use the subsidiaries' losses for the reduction of its taxable income. By means of the consolidated returns in earlier years it was enabled to deduct them. *And now it claims for 1929 deductions for diminution of assets resulting from the same losses. If allowed, this would be the practical equivalent of double deduction.* In the absence of a provision of the Act definitely requiring it, a purpose so opposed to precedent and equality of treatment of taxpayers will not be attributed to lawmakers." (Italics supplied.) * * *.

In the instant case the record shows (R. 25–27) that during the years 1920 to 1923, inclusive, the appellee was affiliated with A. F. Thane and Company and the Pacific Lumber Company of Illinois, and that for each of said years a consolidated return, as well as separate returns, were filed. Taxes were paid upon the net income shown in the consolidated returns. The net income or loss of the affiliated corporations, and the consolidated net income or loss, for each of the years 1920 to 1923, were as follows:

	1920	1921	1922	1923
Pac. Lbr. Co. of Mo., appellee	$2,262,959.39	$379,624.88	$1,266,450.51	$1,379,444.78
A. F. Thane Co.	[1] 443,821.95	[1] 548,166.82	[1] 344,791.49	[1] 229,942.15
Pac. Lbr. Co. of Ill.	[1] 23,052.35	18,314.97	31,198.03	8,809.83
Consolidated	1,796,085.09	[1] 150,226.97	952,857.05	1,138,362.46

[1] Net loss.

The consolidated net loss of $150,226.97 for 1921 was allowed as a deduction from the consolidated net income for 1922, resulting in a consolidated net income for the latter year of $802,630.08, upon which the tax was paid.

From the foregoing tabulations, it will be seen that during the years 1920 to 1923, inclusive, the appellee was permitted to deduct from its income, upon consolidated returns, the losses sustained by its affiliate, A. F. Thane and Company, in the aggregate amount of $1,566,722.41. The total investment of the appellee in the stock of the Thane Company was $479,625 and the net unpaid balance of advances at the end of 1923 to the Thane Company was $953,134.49, resulting in an aggregate investment in stock and advances of $1,432,759.49. The latter amount was claimed by the appellee as a deduction in the year 1923. These significant facts may be otherwise shown in the manner adopted by the Supreme Court in the *Ilfeld* case:

Operating losses of affiliate claims and deducted by appellee 1920 to 1923, inclusive	$1,566,722.41
Investment loss claimed by appellee for 1923	1,432,759.49
Total losses claimed by appellee	2,999,481.90
Investment (stock plus advances)	1,713,782.09

This court, affirming the judgment of the District Court, held that the deduction of 1923 should be allowed. In the language of the Supreme Court the allowance of the deduction in 1923 permits the appellee to twice use the subsidiary's losses for the reduction of its

taxable income and is the practical equivalent of a double deduction, for which there is no statutory authority.

We desire also to point out that in *Burnet* v. *Aluminum Goods Co.*, 287 U.S. 544, upon which this court relied in affirming the judgment of the district court for the appellee, the taxpayer did not, and could not, obtain the benefit of the subsidiary's losses in the years prior to the taxable year there involved (1917). Affiliation of corporations for tax purposes was neither required nor permitted prior to 1917. Each corporation made its separate return of net income and was taxed thereon without regard to its relationship to other corporations. Hence the operating losses of the subsidiary in the years prior to 1917 were not avaliable to the taxpayer as deductions from its income in those years. That situation prompted the observation of the Supreme Court that the stock investment and advances were a real loss in 1917 when the subsidiary was liquidated. It must be noted, however, that the taxpayer there was allowed a deduction in 1917, when a consolidated return for excess-profits tax purposes was filed, for the 1917 operating loss of the subsidiary and the amount of such loss was deducted from the total investment balance in fixing the amount of the investment loss which the Supreme Court said should be allowed as a deduction in 1917. The instant case and the *Ilfeld* case differ from the *Aluminum Goods Co.* case in that during the years preceding the taxable year involved in each of the former cases the affiliated corporations were required or permitted to file, and did file, consolidated returns of net income for tax purposes and the taxpayer in each instance claimed and deducted from its income in such prior years the losses of the subsidiary.

In view of the decision of the Supreme Court in the *Ilfeld* case it is thought that this court might desire to reconsider its opinion and judgment in the instant case. In that belief and to that end this petition is respectfully submitted.

Wherefore your petitioner, the appellant in this cause, respectfully prays that this petition may be granted; that the judgment heretofore entered herein may be vacated; that the opinion heretofore filed may be revised and the judgment of the District Court reversed.

Dated: This 30th day of April 1934.

H. H. McPike,
United States Attorney.
By Esther B. Phillip,
Assistant United States Attorney.

(Endorsed:) Second petition for rehearing. Lodged May 1, 1934. Paul P. O'Brien, clerk.

At a stated term, to wit: The October term, A.D. 1933, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco,

in the State of California, on Monday the seventh day of May in the year of our Lord one thousand nine hundred and thirty-four.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, presiding; Honorable Francis A. Garrecht, Circuit Judge.

No. 6816

JOHN P. McLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Order denying motions to recall mandate and file second petition for rehearing

Ordered motion of appellant to recall mandate of this court in above cause, heretofore issued on March 3, 1934, and motion of appellant for leave to file second petition for rehearing presented by Miss Esther B. Phillips, assistant United States attorney, counsel for appellant, and in support of said motions, and by Mr. Felix T. Smith, counsel for appellee, and in opposition to said motions, and submitted for consideration and decision.

Further ordered, after consideration, that said motions, and each of them be, and hereby is, denied.

United States Circuit Court of Appeals for the Ninth Circuit

No. 6816

JOHN P. McLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE First District of California, appellant

vs.

PACIFIC LUMBER COMPANY, A CORPORATION, APPELLEE

Certificate of clerk, U.S. Circuit Court of Appeals for the Ninth Circuit to record certified under rule 38 of the Revised Rules of the Supreme Court of the United States.

I, Paul P. O'Brien, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-eight (78) pages, numbered from and including 1 to and including 78, to be a full, true, and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of Mr. A. Crawford Biggs, Solicitor General of the United States, on behalf of respondent, and certified under rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the city of San

Francisco, in the State of California, this 21st day of May, A.D. 1934.

[SEAL] PAUL P. O'BRIEN, *clerk.*

In the Supreme Court of the United States

October term, 1933

JOHN P. McLAUGHLIN, COLLECTOR OF INTERNAL REVENUE

v.

PACIFIC LUMBER COMPANY (A CORPORATION)

Order extending time within which to apply for a writ of certiorari

On consideration of the motion of counsel for the petitioner in the above-entitled cause, and good cause therefor having been shown, it is now here ordered that the time within which a petition for a writ of certiorari may be filed herein be, and the same hereby is, extended for a period of thirty days from May 23, 1934.

Dated this fifteenth day of May 1934.

GEORGE SUTHERLAND,

Associate Justice of the Supreme Court of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1934

Order allowing certiorari

Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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PETITION FOR A WRIT OF CERTIORARI

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. ——

JOHN P. MCLAUGHLIN, COLLECTOR OF INTERNAL REVENUE for the First District of California, petitioner

v.

PACIFIC LUMBER COMPANY, A CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of John P. McLaughlin, Collector of Internal Revenue for the First District of California, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit, entered in the above cause on September 6, 1933, affirming the decision of the District Court for the Northern District of California.

OPINIONS BELOW

No written opinion was filed by the District Court. The opinion of the Circuit Court of Appeals (R. 54–60) is reported in 66 F. (2d) 895.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 6, 1933 (R. 60). A petition for rehearing was filed October 4, 1933, and was denied February 23, 1934 (R. 60–61). Subsequently a motion for leave to file a second petition for rehearing and for reconsideration was filed May 1, 1934 (R. 61–62). This motion was denied May 7, 1934 (R. 65–66). On May 15, 1934, Mr. Justice Sutherland entered an order granting an extension of time for filing a petition for a writ of certiorari for a period of thirty days from May 23, 1934 (R. 67). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the respondent was entitled to deduct losses and bad debts claimed to result upon the liquidation of its subsidiary where the respondent, through the medium of consolidated returns, had been enabled to deduct from its income losses of its subsidiary exceeding the amount of its investment in the subsidiary represented by the cost of its stock and advances.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra,* pp. 10–11.

STATEMENT

The respondent instituted this action in the District Court for the Northern District of California for the recovery of an alleged overpayment of income taxes for the calendar year 1923 in the amount of $143,122.23. The overpayment was alleged to result from the failure to allow as deductions for the taxable year a loss sustained upon the liquidation of A. F. Thane & Company and bad debts owing from the said company. The case was tried without a jury upon an agreed statement of facts which disclosed the following (R. 32–40):

Prior to 1920 the respondent, a Maine corporation, having its principal office in California, owned 540 of 600 shares outstanding of A. F. Thane & Company stock which it had acquired at a cost of $31,500 (R. 33). In 1920 the stock was increased to 5,000 shares and the respondent subscribed for 3,960 additional shares for which it paid $100 each. In 1921 the respondent purchased the remaining 500 shares for $52,125. The total sum paid for the 5,000 shares which it owned at the end of 1921 was $479,625 (R. 33–34). During the period between March 17, 1921, and the close of December, 1923, the respondent advanced cash to, paid accounts for, and assumed indebtedness of A. F. Thane & Company in the total amount of $1,234,157.09, for which it received partial repayment prior to the close of December, 1923, in the amount of $260,461.88 (R. 34). At the close of 1923 A. F. Thane & Company

was duly dissolved and was liquidated by transfer of all of its remaining assets to the respondent and by ceasing to do business. The assets thus transferred were carried on A. F. Thane & Company's books at a total value of $20,560.72 and were taken over by the respondent at this value (R. 34–35). The net amount due to the respondent as the result of all the above transactions was $953,134.49, which the respondent charged off its books as a debt ascertained to be worthless during the year 1923 (R. 35).

During the years 1920 to 1923, inclusive, the respondent was affiliated with A. F. Thane & Company and the Pacific Lumber Company, an Illinois corporation (R. 35–36). Separate tax returns were filed by each of these companies and also consolidated returns were filed showing the operations of the three companies. Taxes were paid upon the net income shown in the consolidated returns. The separate and consolidated returns showed the following net incomes and losses of the affiliated corporations (R. 36–37):

	1920	1921	1922	1923
Pacific Lumber Company of Maine, Respondent	$2,262,959.39	$379,624.88	$1,266,450.51	$1,379,494.78
A. F. Thane & Company	[1] 443,821.95	[1] 548,166.82	[1] 344,791.49	[1] 229,942.15
Pacific Lumber Company of Illinois	[1] 23,052.35	18,314.97	31,198.03	8,809.83
Consolidated	1,796,085.09	[1] 150,226.97	952,857.05	1,158,362.46

[1] Net loss.

The consolidated net loss of $150,226.97 for 1921 was allowed as a deduction from the consolidated net income for 1922, resulting in a consolidated net income for the latter year of $802,630.08, upon which the tax was paid.

Upon the consolidated income of $1,158,362.46 for the year 1923 the respondent paid to the petitioner the sum of $144,795.31 as the total income tax for that year. Thereafter upon examination and audit the respondent's corrected net income for the year 1923 was found to be $1,144,977.80 and the amount of $143,122.23 was found to be the total amount of income tax due. The respondent received a refund of $1,673.08, with interest, from the petitioner on account of the difference between the amount of tax shown on the return and the amount calculated upon the corrected net income. (R. 37–38.) On March 14, 1928, the respondent filed a claim for refund of the total amount of $143,122.23 together with interest thereon in the sum of $37,645.90. The claim was rejected by the Commissioner on June 14, 1928. (R. 38.)

The District Court entered judgment for the respondent in the principal amount of its claim together with interest to the date of judgment and with interest thereafter upon these amounts at 6 percent until paid (R. 29–31). The Circuit Court of Appeals affirmed the judgment of the District Court (R. 54–60).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the allowances claimed by the respondent as the result of the liquidation of A. F.

Thane & Company did not constitute a double deduction.

2. In holding that the petitioner had failed to establish any specific instance of a double deduction.

3. In failing and refusing to hold that the losses and bad debts claimed as deductions by the respondent for the year 1923 as a result of the liquidation of A. F. Thane & Company in the amounts of $479,625 and $953,134.49, respectively, must be offset by the losses sustained by A. F. Thane & Company during the years 1920 to 1923, inclusive, in the aggregate amount of $1,508,399.58 of which the respondent received the benefit as deductions in consolidated returns filed for such years.

4. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The Collector urged before the Circuit Court of Appeals that the deduction claimed by the respondent was not allowable for two reasons: (1) Because the liquidation occurred during a consolidated return period and was consequently a nonrecognizable intercompany transaction, and (2) that the loss claimed on liquidation had theretofore been recovered by deduction of the subsidiary's losses on consolidated returns, in other words, that the allowance would give a double deduction. In failing to reverse the judgment of the District Court upon the basis of the Collector's second contention, we

submit that the Circuit Court of Appeals has reached a result directly contrary to the decision of this Court in *Charles Ilfeld Co.* v. *Hernandez,* No. 579, October Term, 1933, decided April 2, 1934.

In the *Ilfeld* case this Court held that no deduction could be allowed the taxpayer for losses sustained on the stock of and advances to its subsidiaries in the year in which the subsidiaries were liquidated. One of the reasons given for the disallowance was that since the taxpayer had been enabled, through the medium of consolidated returns in years prior to liquidation, to deduct operating losses of the subsidiaries aggregating more than the taxpayer's actual stock investment and advances, a further allowance on liquidation would be the practical equivalent of a double deduction, which could not be allowed in the absence of a statutory provision granting the right. The opinion of the Circuit Court of Appeals here, taken alone, does not disclose the inconsistency between the two cases, since the court stated that the Collector had failed to establish "any specific instance" of a double deduction. (R. 59.) But an examination of the stipulated facts in the instant case shows clearly their exact similarity to those in the *Ilfeld* case.

A footnote in this Court's opinion in the latter case shows that the taxpayer had deducted prior to 1929 operating losses of its subsidiaries in the aggregate amount of $190,431.66 and claimed an

investment loss in the subsidiaries for 1929, the year of liquidation, in the amount of $130,792.11, making a total of losses claimed of $321,223.77, while its actual investment (stock plus advances) amounted to but $168,812.49. The aggregate operating losses of the subsidiaries theretofore allowed ($190,431.66) exceeded the loss claimed on liquidation ($130,792.11) by $59,639.55. In the instant case the stipulation discloses (R. 36–37) that through the consolidated returns of the years 1920 to 1923, inclusive, the respondent deducted operating losses of A. F. Thane & Company, aggregating not less than $1,508,399.58. The investment loss claimed by the respondent for the year 1923 upon the stock and unrepaid advances amounted to $1,432,759.49, making a total of losses claimed of $2,941,159.07. The respondent's actual investment (stock plus advances) amounted to $1,713,782.09. The aggregate operating losses of the subsidiary theretofore allowed ($1,508,399.58) exceeded the loss claimed on liquidation ($1,432,759.49) by $75,640.09. These facts make it apparent that the allowance of any amount as a result of liquidation would be the practical equivalent of a double deduction.

The opinion and judgment of the Circuit Court of Appeals were filed before the decision of this Court was handed down in the *Ilfeld* case. But after that decision the Collector presented a motion for leave to file a petition for rehearing and

reconsideration (R. 61–62). The petition accompanying the motion demonstrated clearly the similarity between the situation here and that in the *Ilfeld* case and the fact that this Court's decision required a reversal of the District Court's judgment here (R. 62–65). The court below nevertheless denied the motion, leaving the Collector, as his only remedy, an application to this Court to correct the decision which, we submit, is manifestly erroneous.

Wherefore it is respectfully submitted that this petition should be granted and that the decision of the Circuit Court of Appeals should be reversed to accord with this Court's decision in the *Ilfeld* case.

J. CRAWFORD BIGGS,
Solicitor General.

JUNE 1934.

APPENDIX

Revenue Act of 1921, c. 136, 42 Stat. 227, 254, 260:

SEC. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise; unless, in order to clearly reflect the income, the loss should in the opinion of the Commissioner be accounted for as of a different period. * * *

(5) Debts ascertained to be worthless and charged off within the taxable year (or in the discretion of the Commissioner, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt to be charged off in part;

* * * * *

SEC. 240. (a) That corporations which are affiliated within the meaning of this section may, for any taxable year beginning on or after January 1, 1922, make separate returns or, under regulations prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income for the purpose of this title, in which case the taxes thereunder shall be computed and determined upon the basis of such return. If return is made on either of such bases, all returns thereafter made shall be upon the same basis unless permission to change the basis is granted by the Commissioner.

* * * * *

Treasury Regulations 62, promulgated under the Revenue Act of 1921:

> ART. 631. *Affiliated corporations.*—Consolidated returns are based upon the principle of levying the tax according to the true net income and invested capital of a single enterprise, even though the business is operated through more than one corporation. * * *
>
> ART. 636. *Consolidated net income of affiliated corporations.*—Subject to the provisions covering the determination of taxable net income of separate corporations, and subject further to the elimination of intercompany transactions (whether or not resulting in any profit or loss to the separate corporations), the consolidated taxable net income shall be the combined net income of the several corporations consolidated. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1934.